

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ADJUSTACAM LLC

v.

AMAZON.COM, INC.; ET AL.

NO. 6:10-cv-329-LED

JURY

**PLAINTIFF’S REPLY REGARDING ITS MOTION TO DISMISS ITS CLAIMS
AGAINST NEWEGG AND ROSEWILL AND THEIR COUNTERCLAIMS AGAINST
PLAINTIFF FOR LACK OF SUBJECT MATTER JURISDICTION**

Plaintiff Adjustacam LLC (“Adjustacam”), through counsel, hereby replies to the Response (Dkt. No. 699) filed by Newegg, Inc., Newegg.com Inc., and Rosewill, Inc. (collectively “NewEgg/Rosewill”) as follows:

In its Response, NewEgg/Rosewill requests that this Court deny Adjustacam’s Motion on the sole basis that it requested dismissal of NewEgg/Rosewill’s counterclaims with prejudice. *See* Dkt. No. 699 at Pg. 1. In light of NewEgg/Rosewill’s Response, Adjustacam respectfully requests that NewEgg/Rosewill’s counterclaims be dismissed **without prejudice**.¹

As such, for the reasons set forth in Adjustacam’s associated briefing (Dkt. No. 678), under *Super Sack* and its progeny, AdjustaCam’s covenant not to sue and motion to dismiss divests the Court of subject matter jurisdiction over AdjustaCam’s claims against Newegg/Rosewill regarding infringement of the ‘343 Patent and Newegg’s First and Second counterclaims. Thus, the Court should grant Adjustacam’s Motion to Dismiss its claims of infringement of the ‘343 patent against Newegg/Rosewill with prejudice and Newegg/Rosewill’s First and Second Counterclaims **without prejudice**.

A revised proposed Order of dismissal is respectfully submitted herewith.

¹ Had Newegg/Rosewill raised this issue during Plaintiff’s multiple attempts to meet and confer in good faith over our motion, it could have been addressed at the onset.

September 17, 2012

Respectfully submitted,

By: /s/ John J. Edmonds

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

September 17, 2012

/s/ John J. Edmonds
John J. Edmonds